

## RELIEF OF MARGARITO DOMANTAY

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MAY 12, 1998.—Committed to the Committee of the Whole House and ordered to be printed

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Mr. SMITH of Texas, from the Committee on the Judiciary,  
submitted the following

### R E P O R T

[To accompany H.R. 375]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 375) for the relief of Margarito Domantay, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. PAYMENT OF CLAIM AGAINST THE UNITED STATES FOR ERRONEOUS COMPUTATION OF RETIRED PAY.**

The Secretary of the Treasury shall pay, out of any funds in the Treasury not otherwise appropriated, to Petty Officer Margarito Domantay, United States Navy (retired), of Tampa, Florida, the sum of \$6,386.30, such amount representing the amount of retired pay (with interest) that Petty Officer Domantay would have received for the period beginning on June 8, 1979, and ending on March 12, 1985, had that retired pay been properly computed based upon pay grade E-5 second class (rather than pay grade of E-4, third class, with which such retired pay was computed due to administrative error).

**SEC. 2. LIMITATION ON AGENT AND ATTORNEY FEES.**

It shall be unlawful for an amount exceeding 10 percent of the amount paid pursuant to section 1 to be paid to, or received by, any agent or attorney for any service rendered in connection with the claim described in such section. Any person who violates this section shall be guilty of an infraction, and shall be subject to a fine in the amount provided in title 18, United States Code.

**PURPOSE AND SUMMARY**

The bill would provide the claimant with the retired pay he would have received between June 8, 1979, and March 12, 1985, had the retired pay been computed at pay grade E-5, second class.

**BACKGROUND AND NEED FOR LEGISLATION**

Mr. Domantay was transferred to the Fleet Reserve as a Petty Officer on June 8, 1979. Although his transfer documents indicated that he had been advanced to the pay grade of E-5 prior to the transfer, the Transfer Authorization listed Mr. Domantay as an E-4. Because of this conflict of information, an administrative error was made which established Mr. Domantay's pay account at pay grade E-4. Mr. Domantay did not become aware of the error until March 1991. Unfortunately, the Barring Act bars any claim which is not received within 6 years after the date the claim first accrued.

The General Accounting Office reviewed Mr. Domantay's claim, and recommended that a private relief bill be enacted to provide the amounts Mr. Domantay should have received from June 8, 1979 to March 12, 1985. Mr. Domantay has received the backpay for the years 1985-1991 because the Department was not barred from making those payments.

The Department of the Navy supports H.R. 375 with an amendment. That amendment was adopted by the Committee.

**HEARINGS**

The Committee's Subcommittee on Immigration and Claims held no hearings on H.R. 375.

**COMMITTEE CONSIDERATION**

On March 12, 1998, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 375, as amended, by voice vote, a quorum being present.

On April 1, 1998, the Committee on the Judiciary met in open session and ordered reported favorably the bill H.R. 375, with amendment by voice vote, a quorum being present.

# COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 375, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 2, 1998.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 375, a bill for the relief of Margarito Domantay.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter, who can be reached at 226-2860.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

cc: Hon. John Conyers, Jr.,  
Ranking Minority Member.

## *H.R. 375—A bill for the relief of Margarito Domantay*

H.R. 375 would require the Secretary of the Treasury to pay \$6,386.30 to Mr. Domantay to correct an error made by the Department of the Navy in calculating the amount of his retirement pay. Because the bill would increase direct spending, pay-as-you-go procedures would apply, but the budgetary impact would be insignificant.

The CBO staff contact for this estimate is John R. Righter, who can be reached at 226-2860. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in the First Amendment of the Constitution.

#### AGENCY VIEWS

The comments of the Department of the Navy on H.R. 375 are as follows:

DEPARTMENT OF THE NAVY  
OFFICE OF LEGISLATIVE AFFAIRS  
*Washington, DC, December 23, 1997.*

Hon. LAMAR SMITH, *Chairman,*  
*Subcommittee on Immigration and Claims,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Defense on H.R. 375, 105th Congress, a bill "For the relief of Margarito Domantay." The Department of the Navy has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The purpose of the bill is to relieve Petty Officer Margarito Domantay, United States Navy, Retired, for the amount of pay he would have received had he been correctly retired in the pay grade of E-5, rather than the pay grade of E-4.

Petty Officer Domantay was transferred to the Fleet Reserve on June 8, 1979. The Transfer Authorization listed him as an E-4, however, it was noted on the form that he was advanced to E-5 prior to transfer. Since E-5 was the last grade held prior to transfer, this is the grade that his pay should have been based on. Due to administrative error, the advancement was not noted and the pay account was established in pay grade E-4. The error was not noted by Petty Officer Domantay until March of 1991. However, Petty Officer Domantay's claim is barred based on the Barring Act of 1940, now codified at 37 U.S.C. 3702.

The Barring Act provides in part that:

Every claim . . . against the United States cognizable by the General Accounting Office . . . shall be forever barred unless such claim . . . shall be received in said office within 6 years after the date such claim first accrued.

The General Accounting Office reviewed Petty Officer Domantay's claim and concluded that the six year statute of limitations of the Barring Act was applicable. Therefore, GAO recommends that private relief be provided to correct the administrative error in Petty Officer Domantay's pay that ran from June 8, 1979, to March 12, 1985.

The Department of Navy, on behalf of the Department of Defense, recommends that legislation be enacted to provide such re-

lief. The Department would support H.R. 375 which the following changes to Section 1 of H.R. 375:

The Secretary of the Treasury shall pay out of any funds in the Treasury not otherwise appropriated, to Petty Officer Margarito Domantay, United States Navy, Retired, of Tampa, Florida, the sum of \$6,386.30. Such sum shall represent the amount of retired pay (with interest) he would have received for the period beginning on June 8, 1979, and ending on March 12, 1985, had it been properly computed at pay grade E-5, second class (rather than pay grade E-4, third class, in which it was computed due to administrative error.)

The changes would clearly state the facts as they exist. Under these circumstances, enactment of the bill would provide a equitable and fair relief to Petty Officer Domantay. As such, the bill is supported with the above recommended change to Section 1 of H.R. 375.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

R.F. WALSH, *Captain,*  
*JAGC, U.S. Navy*  
*Director, Legislation*  
*By direction of the Chief.*

Copy to:

Hon. Melvin L. Watt,  
 Ranking Minority Member